

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**KAMIEL L. FOSKEY,**

Plaintiff,

v.

**MICHAEL J. ASTRUE, Commissioner,  
Social Security Administration,**

Defendant.

**MOSMAN, J.,**

No. 3:10-CV-06084-HU

OPINION AND ORDER

On September 12, 2011, Magistrate Judge Hubel issued his Findings and Recommendation (“F&R”) [25] in the above-captioned case recommending denial of the Commissioner’s motion to dismiss [18]. Magistrate Judge Hubel also recommended reversal of the Appeals Council’s decision not to to reopen Foskey’s 2000 Child’s Insurance Benefits claim, with remand to the Commissioner with instructions to reopen the same, and to recalculate and award retrospective benefits pursuant to the regulations. No objections were filed.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See*

*Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R [25] as my own opinion.

IT IS SO ORDERED.

DATED this 28th day of September, 2011.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court